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8 **Attorneys for Plaintiffs Xiaotian Sun**
9 **and Wei Luo**

ENDORSED

JUL 25 2 3

A. Ramirez

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12 **XIAOTIAN SUN and WEI LUO,**

13 **Plaintiffs,**

14 **vs.**

15 **CSABA MESTER, MARTA MESTER,**
16 **PACIFIC GAS AND ELECTRIC**
17 **COMPANY, and DOES 1 - 20,**

18 **Defendants.**

Case No.: 17CV305995

**VERIFIED FIRST AMENDED COMPLAINT
FOR DAMAGES AND EQUITABLE RELIEF
BASED UPON:**

1. **Declaratory Relief;**
2. **Quiet Title To Express Easement;**
3. **Quiet Title To Prescriptive Easement;**
4. **Quiet Title To Equitable Easement;**
5. **Interference With Easements; and**
6. **Acquisition of Easement by Eminent Domain**

19 **Plaintiffs Xiaotian Sun and Wei Luo (hereinafter "Plaintiffs") alleges as follows:**

20 **PRELIMINARY ALLEGATIONS**

21 **1. Plaintiffs are individuals who at all times herein were and are residents of Santa**
22 **Clara County, California. Plaintiffs are the owners of the real property and structures**
23 **commonly known as 15651 On Orbit Drive, Saratoga, California, APN 517-25-046 ("Sun**
24 **Property").**

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25 **COMPLAINT**

1 2. Defendants Csaba Mester and Marta Mester are individuals who at all times
2 herein were and are residents of Santa Clara County, California. The Mesters own the real
3 property and structures commonly known as 15645 On Orbit Drive, Saratoga, California, APN
4 517-26-015 and 517-26-016 ("Mester Property").

5 3. Defendant Pacific Gas And Electric Company (PG&E) is a utility company
6 doing business in Santa Clara County, California. PG&E is named as a defendant in this
7 lawsuit only because the dispute between Plaintiffs and the Mesters involves the rights, duties,
8 and obligations relating to a public utility easement that burdens the Mesters' property. PG&E
9 is named as a necessary and indispensable party.

10 4. Plaintiffs are ignorant of the true names and capacities, whether individual,
11 corporate, associate, or otherwise, of defendants named herein as DOES 1 through 20,
12 inclusive, and therefore sues said defendants by such fictitious names pursuant to the Code of
13 Civil Procedure §474. Plaintiffs will pray leave of Court to amend this Complaint to allege
14 their true names and capacities when the same have been ascertained.

15 5. Plaintiffs are informed and believe, and thereon allege, that each of the
16 fictitiously named defendants are responsible in some manner for the occurrences herein
17 alleged and that Plaintiffs' injuries and damages were proximately caused thereby. As used
18 herein, the word "defendants" shall mean the named defendants as set forth above and
19 defendants DOES 1 through 20, and each of them.

20 6. The real properties owned by Plaintiffs and the Mesters share a common
21 boundary. The Mester Property is burdened by a public utility easement. Plaintiffs are
22 informed and believe and thereon allege that PG&E installed an electrical pole and service lines
23 pursuant to the public utility easement. While the Mesters acknowledge the existence of the
24 public utility easement, they contend that the electrical pole and service lines have been placed
25 outside of the deeded easement.

26 7. Plaintiffs' service line connects to this electrical pole. Plaintiffs want to upgrade
27 the service to their property and needs to install, among other things, a new underground
28 conduit and a small underground junction box inside the public utility easement and connect

1 these improvements to the existing electrical pole. Plaintiffs have requested access to the
2 portion of the public utility easement on the Mester Property in order to complete this work.
3 The Mesters have refused to provide access for this work to be done and have further claimed
4 that the electrical pole is outside of the easement and that Plaintiffs therefore have no right to
5 complete the service upgrade because to do so would require burdening portions of the Mester
6 Property outside of the public utility easement. Plaintiffs and PG&E have requested access to
7 the Mester Property in order to confirm the Mesters' assertion that the electrical pole is outside
8 of the deeded public utility easement. The Mesters have refused to provide access. The
9 Mesters have also demanded that the electrical pole and service lines be moved to a different
10 location.

11 **FIRST CAUSE OF ACTION**
12 **(Declaratory Relief Against All Defendants)**

13 8. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 7 as
14 though set forth in full herein.

15 9. An actual controversy has arisen and now exists between Plaintiffs and
16 Defendants relative to their respective rights and duties with regard to, among other things, the
17 public utility easement burdening the Mester Property, the location of the electrical pole and
18 service lines, whether access to the Mester Property in order to determine the location of the
19 electrical pole and service lines in relation to the public utility easement is justified, whether the
20 electrical pole and service lines need to be moved, who, if anyone, is responsible for the
21 relocation of the electrical pole and service lines if in fact they do need to be moved, whether
22 the historical existence of the electrical pole and service lines in their current location gives rise
23 to the right for them to remain in their current location, whether Plaintiffs are entitled to
24 complete the upgrade to their electrical service based on the public utility easement and the
25 historical existence and location of the electrical pole and service lines, and who is responsible
26 for any costs and expenses associated with the foregoing.

27 10. Plaintiffs desire a judicial determination of their rights and duties with respect
28 to the public utility easement and the other subject matters set forth in Paragraph 9 above and a

1 declaration with respect to each of these subject matters.

2 11. A judicial declaration is necessary and appropriate at this time under the
3 circumstances in order that Plaintiffs may ascertain their rights and duties as well as those of
4 the Mesters and PG&E with respect to the subject matters set forth in Paragraph 9 above.

5 12. Plaintiffs have attempted to resolve these issues informally with both the
6 Mesters and PG&E but, unfortunately, the Mesters have refused to communicate any further
7 with regard to these subject matters.

8 WHEREFORE, Plaintiffs pray for relief against Defendants, and each of them, as more
9 fully set forth below.

10 **SECOND CAUSE OF ACTION**
11 **(Quiet Title to Express Easement Against Defendants Csaba Mester and Marta Mester)**

12 13. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 12 as
13 though set forth in full herein.

14 14. The basis of Plaintiffs' claim to an express easement is based upon the public
15 utility easement that burdens the Mester Property. Said express easement was granted by the
16 then owner of the Mester Property by dedication in a subdivision map entitled "Tract No. 3360
17 Apollo Heights" recorded in Book 178 of Maps at P. 38 and 39, in the official records of Santa
18 Clara County, California on May 15, 1964 (the "Subdivision Map").

19 15. As stated in the Subdivision Map, the then owners of the Mester Property
20 dedicated "to public use" an easement for public utility within the northerly 10 feet of the
21 Mester Property. As also stated on the Subdivision Map, said dedication was accepted by the
22 County "on behalf of the public". A copy of a recorded Subdivision Map memorializing this
23 public utility easement is attached hereto as **Exhibit A**.

24 16. Plaintiffs are informed and believe that the electrical pole and service lines that
25 benefit their property are located within the public utility easement. The Mesters contest this
26 issue. Plaintiffs seek to quiet title to the public utility easement and the location of the
27 electrical pole and service lines within that easement and assert that Plaintiffs are entitled to
28 upgrade their utility service by installing, among other things, a new underground conduit and a

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1 small underground junction box inside the public utility easement and connecting these
2 improvements to the existing electrical pole.

3 WHEREFORE, Plaintiffs pray for relief against Defendants, and each of them, as more
4 fully set forth below.

5 **THIRD CAUSE OF ACTION**
6 **(Quiet Title to Prescriptive Easement Against Defendants Csaba Mester and Marta Mester)**

7 17. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 16 as
8 though set forth in full herein.

9 18. In the event that the existing electrical pole and service lines are not located
10 within the express public utility easement, Plaintiffs request that the Court grant Plaintiffs and
11 PG&E a prescribed easement allowing the electrical pole and service lines to remain in their
12 current location and allowing Plaintiffs to upgrade their electrical service by, among other
13 things, installing, a new underground conduit and a small underground junction box and
14 connecting these improvements to the existing electrical pole.

15 19. The easement that Plaintiffs are requesting exists based on the establishment of
16 prescriptive rights. Prescriptive rights have been established by virtue of the historical
17 existence of the electrical pole, service lines, and related equipment in their current location for
18 more than five years without permission.

19 WHEREFORE, Plaintiffs pray for relief against Defendants, and each of them, as more
20 fully set forth below.

21 **FOURTH CAUSE OF ACTION**
22 **(Quiet Title to Equitable Easement Against Defendants Csaba Mester and Marta Mester)**

23 20. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 19 as
24 though set forth in full herein.

25 21. In the event that the existing electrical pole and service lines are not located
26 within the express public utility easement, Plaintiffs request that the Court grant Plaintiffs and
27 PG&E an equitable easement allowing the electrical pole and service lines to remain in their
28 current location and allowing Plaintiffs to upgrade their electrical service by, among other
things, installing, a new underground conduit and a small underground junction box and

1 connecting these improvements to the existing electrical pole.

2 22. Equitable rights exist based on, among other facts, the good-faith installation of
3 the electrical pole, service lines, and related equipment in a location that was understood to be
4 within the public utility easement.

5 23. The encroachment is not the result of Plaintiffs' willful act in that Plaintiffs are
6 informed and believe that the subject electrical pole and related lines providing electrical
7 service to the Sun Property have existed in their current location for decades, whereas Plaintiffs
8 did not acquire the Sun Property and begin using said electrical lines and electrical pole until
9 January 2008.

10 24. Balancing the hardships, if Plaintiffs are denied an equitable easement to
11 continue using the electrical lines and electrical pole which have been in existence for decades,
12 Plaintiffs will suffer irreparable injury in that Plaintiffs will be deprived of electrical service to
13 their residence, whereas Defendants will suffer no harm or burden, let alone undue burden, if
14 the existing use is continued, or if Plaintiffs are allowed to upgrade that use.

15 WHEREFORE, Plaintiffs pray for judgment as set forth below.

16 **FIFTH CAUSE OF ACTION**
17 **(Interference With Easements Against Defendants Csaba Mester and Marta Mester)**

18 25. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 24 as
19 though set forth in full herein.

20 26. Defendants have obstructed and interfered with Plaintiffs' access to, and use of,
21 the above described easement by including, but not limited to, installing a fence which
22 interferes with Plaintiffs' access to the easement area.

23 27. As a result of Defendants' interference with Plaintiffs' easement rights,
24 Plaintiffs have suffered damages including, but not limited to, the loss of use of the easement
25 for purposes of upgrading Plaintiffs' electrical service to, among other things, charge an
26 electric vehicle, delay in the completion of the electrical upgrade work, increased costs of
27 construction for the electrical upgrade work, and other compensatory and consequential
28 damages, all in an amount to be proven at trial.

1 WHEREFORE, Plaintiffs pray for judgment as set forth below.

2
3 **SIXTH CAUSE OF ACTION**
4 **(Acquisition of Easement by Eminent Domain Against Defendants Csaba Mester and Marta Mester)**

5 28. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 27 as
6 though set forth in full herein.

7 29. Pursuant to Civil Code § 1001, Plaintiffs are entitled to acquire by eminent
8 domain an appurtenant easement over the Mester Property to provide utility service to the Sun
9 Property.

10 30. As set forth above, there is a great necessity for this easement in that without it,
11 Plaintiffs will have no electrical service to the Sun Property which is currently being provided
12 by the existing electrical pole and lines.

13 31. The location of the proposed easement affords the most reasonable service to the
14 Sun Property, consistent with the least damage to the Mester Property, in that it is the same
15 location as the existing electrical pole, electrical lines and related equipment.

16 32. Granting an easement allowing the continued use of the electrical pole and lines,
17 including upgrading this service, which has been used for decades, will have minimal, if any,
18 impact on the Mester Property. The hardship to the Plaintiffs consisting of the loss of electrical
19 service if the easement is not permitted, clearly outweighs any minimal impact to the Mester
20 Property.

21 33. Accordingly, Plaintiffs are entitled to an appurtenant easement over the Mester
22 Property for the use of the existing electrical pole, electrical lines, and related equipment,
23 including upgrading the service of same.

24 WHEREFORE, Plaintiffs pray for judgment as set forth below.

25 **PRAYER**

26 WHEREFORE, Plaintiffs pray as follows:

27 1. For a declaration that there is a public utility easement as described in Exhibit A
28 burdening the Mester Property, that the existing electrical pole and service lines are within that

1 easement or, if they are not, that they can remain in their current location and do not need to be
2 moved, that Plaintiffs, PG&E, or others acting on their behalf have the right to access the
3 Mester Property and the easement for purposes of, among other things, installing, a new
4 underground conduit and a small underground junction box and connecting these
5 improvements to the existing electrical pole; alternatively, that Plaintiffs, PG&E, or others
6 acting on their behalf have a right to access the Mester Property and the easement for purposes
7 of, among other things, installing a new underground conduit and a small underground junction
8 box inside the express public utility easement and connecting these improvements to the
9 existing electrical pole in its current location; that if the electrical pole and service lines do need
10 to be moved, that Plaintiffs have no obligation to pay for any costs or expenses associated with
11 their relocation;

12 2. To quiet title to the express public utility easement as set forth on the
13 Subdivision Map, and the location of the electrical pole, service lines, related equipment within
14 that easement and that Plaintiffs are entitled to upgrade their utility service by installing, among
15 other things, a new underground conduit and a small underground junction box inside the
16 public utility easement and connecting these improvements to the existing electrical pole;

17 3. In the event that the existing electrical pole and service lines are not located
18 within the express public utility easement, that Plaintiffs have a prescriptive easement that
19 provides that the electrical pole, service lines, and related equipment remain in their current
20 location and that Plaintiffs may upgrade their electrical service by, among other things,
21 installing a new underground conduit and a small underground junction box inside the public
22 utility easement and connecting these improvements to the existing electrical pole;

23 4. In the event that the existing electrical pole and service lines are not located
24 within the express public utility easement, that Plaintiffs have an equitable easement that
25 provides that the electrical pole, service lines and related equipment remain in their current
26 location and that Plaintiffs may upgrade their electrical service by, among other things,
27 installing a new underground conduit and a small underground junction box inside the public
28 utility easement and connecting these improvements to the existing electrical pole;

1 5. In the event that the existing electrical pole and service lines are not located
2 within the express public utility easement, that pursuant to C.C.P. § 1001 Plaintiffs have
3 acquired by eminent domain an appurtenant easement that provides that the electrical pole,
4 service lines and related equipment remain in their current location and that Plaintiffs may
5 upgrade their electrical service by, among other things, installing a new underground conduit
6 and a small underground junction box inside the public utility easement and connecting these
7 improvements to the existing electrical pole;

8 6. For compensatory and consequential damages for Defendants' interference with
9 Plaintiffs' easements in an amount to be proven at trial.

10 7. For a preliminary and permanent injunction restraining Defendants from
11 interfering with or obstructing in any way Plaintiffs' use of the above described easements;

12 8. For such other and further relief as the court may deem just and proper.
13

14 Dated: June 26, 2017

ROSSI, HAMERSLOUGH, REISCHL & CHUCK

16 BY: 

RICHARD B. GULLEN

Attorneys for Plaintiffs Xiaotian Sun and Wei
Luo

VERIFICATION (Standard) CCP §§ 446, 2015.5

Sun, et. al. vs. Mester, et al.
Santa Clara County Superior Court Case No. 17CV305995

I declare that:

I am the Plaintiff in the above-entitled action; I have read the foregoing VERIFIED
FIRST AMENDED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF BASED
UPON: 1 Declaratory Relief; 2. Quiet Title To Express Easement; 3. Quiet Title To
Prescriptive Easement; 4. Quiet Title To Equitable Easement; 5. Interference With
Easements; and 6. Acquisition of Easement by Eminent Domain and know the contents
thereof; the same is true of my own knowledge, except as to those matters which are therein
stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct and that this verification was executed on June 21st, 2017, at
Saratoga, California.


XIAOTIAN SUN

ENDORSED

2017 JUN 26 P 3:28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA:

I am a citizen of the United States and employed in the county aforesaid; I am over the age of eighteen years, and not a party to the within action; my business address is 1960 The Alameda, Suite 200, San Jose, CA 95126-1493. On the date set forth below I served the documents described below:

**VERIFIED FIRST AMENDED COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF BASED UPON:**

A. Ramirez
A. Ramirez

1. Declaratory Relief;
2. Quiet Title To Express Easement;
3. Quiet Title To Prescriptive Easement;
4. Quiet Title To Equitable Easement;
5. Interference With Easements; and
6. Acquisition of Easement by Eminent Domain

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Csaba and Marta Mester
1580 Norman Avenue
Santa Clara, CA 95054

Cesar V. Alegria, Esq.
PG&E Law Dept.
P.O. Box 7442
San Francisco, CA 94120

Attorneys for Defendant
PACIFIC GAS & ELECTRIC
COMPANY

Courtesy Copy:

Gordon Finwall, Esq.
Finwall Law Offices, APC
1056 Lincoln Avenue
San Jose, CA 95125
(408)350-4041

Attorneys for Defendants Csaba Mester,
Marta Mester

☒ (BY MAIL) I sealed and placed for collection and mailing such envelope(s) with postage thereon fully prepaid, addressed as stated above, in the basket for outgoing mail at Rossi, Hamerslough, Reischl & Chuck. It is the firm's ordinary business practice that all mail placed in the basket is collected and taken for mailing that same day by an employee of the U.S. Postal Service.

☐ (BY FEDERAL EXPRESS) I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed on this Proof of Service. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 26, 2017 at San Jose, California.

Carmen Mendez

OWNER'S CERTIFICATE

We hereby certify that we are the owners of, or have some right, title or interest in and to the real property included within the subdivision shown upon this map, that we are the only persons whose names it is necessary to pass a chain title to said real property; that we have caused the making of said map and subdivision as shown within the above boundary line and we hereby declare in public and all sheets and portions of sheets not heretofore existing as shown on said subdivision.

We also hereby declare to public use purposes for public use, under, on or over all of On Clark Drive, Apollo Heights, Santa Clara County, California, certain strips of land each subdivided and designated as "P.L.E." (Public Utility Easement), "A.E." (Anchor Easement), "S.E." (Service Easement) and "W.S.E." (Water Service Easement), also easements for air conditioning purposes over these certain areas delineated and designated as "A.C.E." (Air Conditioning Easement), "P.U.E." (Public Utility Easement), "A.E." (Anchor Easement), "S.E." (Service Easement) and "W.S.E." (Water Service Easement) are to be laid free from buildings and structures of any kind except lamp houses and utility Company structures. The above easements are to be further to buildings, structures and appurtenances thereto which have a maximum height of 10' above the ground line of the public.

We also hereby declare for the easement of use of Lots 1, 2, 3 and 4 that certain strips of land delineated and designated as "Anchor Easement" and "Service Easement" are to be laid free from buildings and structures of any kind except lamp houses and utility Company structures.

John T. Pelt
President

I declare this Insurance Company, or corporation

John T. Pelt
Vice President

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

On the 21st day of April, 1964, before me, M.S. Scott, a Notary Public in and for said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared E.W. McNamee and M.T. McNamee.

known to me to be the Vice President and Assistant Secretary respectively of Western Title Insurance Company, Santa Clara County, California, the corporation that executed the within instrument and also known to me to be the persons who executed it on behalf of said corporation and they acknowledged to me that such corporation executed the same as Owner.

John T. Pelt
Vice President

John T. Pelt
Vice President

TRACT NO 3360
APOLLO HEIGHTS
A PORTION OF THE NE 1/4 OF SECTION 14 T.8 S., R.2W. - M.D.B. & M.

SANTA CLARA COUNTY, CALIFORNIA
APRIL, 1964
FRANK PISANO & ASSOCIATES
CIVIL ENGINEERS & SURVEYORS
SAN JOSE, CALIFORNIA

ENGINEER'S CERTIFICATE

I hereby certify that I am a Licensed Civil Engineer of the State of California; that this map containing of two sheets, correctly represents a survey made under my supervision during the month of September, 1963; that the survey is true and correct as shown; that all measurements shown on the map were made by me or under my direct supervision; that the survey was completed in accordance with the laws of the State of California; and that such measurements are sufficient to enable the survey to be retraced.

Frank E. Pisano
Professional Engineer No. 8290

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

On the 21st day of April, 1964, before me, M.S. Scott, a Notary Public in and for said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared E.W. McNamee and M.T. McNamee known to me to be the Vice President and Assistant Secretary respectively of Western Title Insurance Company, this corporation that executed the within instrument and also known to me to be the persons who executed it on behalf of said corporation and they acknowledged to me that such corporation executed the same as Trustee.

John T. Pelt
Vice President

John T. Pelt
Vice President

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Reviewed By: R Jimenez
Case #17CV305995
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9
10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 IN AND FOR THE COUNTY OF SANTA CLARA

14 XIAOTIAN SUN and WEILUO,

15 Plaintiffs,

16 vs.

17 CSABA MESTER, MARTA MESTER,
18 PACIFIC GAS AND ELECTRIC
19 COMPANY, et al.,

20 Defendants.

NO. 17-CV-305995

CROSS-DEFENDANTS CSABA MESTER AND
MARTA MESTER'S CROSS-COMPLAINT
AGAINST PACIFIC GAS & ELECTRIC
COMPANY

21 CSABA MESTER and MARTA MESTER,

22 Cross-Complainants,

23 vs.

24 PACIFIC GAS & ELECTRIC COMPANY
25 and ROES 1 through 20,

26 Cross-Defendants.

27 Cross-Complainants CSABA MESTER and MARTA MESTER (hereinafter "Cross-
28 Complainants") allege as follows:

1. Plaintiffs XIAOTIAN SUN and WEILUO (hereinafter jointly "SUN") are individuals
who at all times relevant herein were and are residents of Santa Clara County, California. SUN is the owner

Defendants & Cross-Complainants Csaba Mester &
Marta Mester's Cross-Complaint Against PG&E

1

EXHIBIT B

1 of the real property and structures located on the real property commonly known as 15651 On Orbit Drive,
2 Saratoga, California, APN 517-25-046 (hereinafter "the SUN Property").

3 2. Cross-Complainants are individuals who at all times herein were and are residents
4 of Santa Clara County, California. Cross-Complainants own the real property and structures on the real
5 property commonly known as 15645 On Orbit Drive, Saratoga, California, APN 517-26-015 and 517-26-016
6 (hereinafter "the MESTER Property").

7 3. Cross-Defendant PACIFIC GAS AND ELECTRIC COMPANY (hereinafter
8 "PG&E") is a utility company doing business in Santa Clara County, California.

9 4. Cross-Complainants are ignorant of the true names and capacities, whether individual,
10 corporate, associate or otherwise, of the cross-defendants named herein as ROES 1 through 20, and,
11 therefore, sue said cross-defendants by such fictitious names pursuant to Code of Civil Procedure Section
12 474. Cross-Complainants will pray leave of court to amend this cross-complaint to allege their true names
13 and capacities when the same have been ascertained.

14 5. Cross-Complainants are informed and believe, and thereon allege, that each of the
15 fictitiously named cross-defendants are responsible in some manner for the occurrences herein alleged and
16 that Cross-Complainants' injuries and damages were proximately caused thereby. As used herein, the word
17 "cross-defendants" shall mean the named cross-defendants as set forth above and cross-defendants ROES
18 1 through 20, and each of them.

19 6. The real properties owned by SUN and Cross-Complainants share a common
20 boundary. The MESTER Property is burdened by a public utility easement. Cross-Complainants are
21 informed and believe and thereon allege that PG&E installed an electrical pole and service lines on the
22 MESTER Property. The electrical service line for the SUN Property connects to this electrical pole. While
23 Cross-Complainants acknowledge the existence of the public utility easement, they contend that the
24 electrical pole and service lines have been placed outside of the deeded public utility easement.

25 7. On information and belief, Cross-complainants allege that PG&E has taken the
26 position that if the electrical pole and service lines were placed outside the deeded easement, PG&E has a
27 prescriptive easement for the locations of the pole and power lines.

1 8. SUN wishes to upgrade the electrical service from the electrical pole on the MESTER
2 Property to the SUN Property. Such connection would apparently involve installing conduit and a junction
3 box on the MESTER Property. Said work would apparently be performed by PG&E or at the direction and
4 approval of PG&E. SUN's ability to connect electrical service to the electrical pole on the MESTER
5 Property depends on the nature, scope and validity of PG&E's easement rights on the MESTER Property.
6 Cross-Complainants have objected to any intrusion on the MESTER Property by PG&E and/or SUN outside
7 the boundaries of the public utility easement and suggested that PG&E move the electrical pole and service
8 lines to locations within the public utility easement. PG&E refuses to move the electrical pole and service
9 lines.

10 9. In addition, the electrical pole in question has begun to list and rather than standing
11 straight up, it now sits at an angle, and that angle is increasing. Given the angle that electrical pole now
12 stands, and that power lines extend from it through trees and across Cross-Complainants' property (i.e., the
13 MESTER Property), Cross-Complainants are concerned that it creates a fire hazard, in the event of winds,
14 and that the change in angle is indicative of instability, and that instability could lead to a collapse of the pole
15 and power lines, creating a fire hazard as well as danger from downed power lines. PG&E has refused to
16 undertake necessary repair or maintenance to correct this dangerous condition.

17 **FIRST CAUSE OF ACTION**

18 **(Declaratory Relief against PG&E)**

19 10. Cross-Complainants incorporate by reference the allegations of Paragraphs 1 through
20 9 as though set forth in full herein.

21 11. An actual controversy has arisen and now exists between Cross-Complainants and
22 PG&E relative to their respective rights and duties with regard to, among other things, the public utility
23 easement burdening the MESTER Property, the location of the electrical pole and service lines, whether the
24 electrical pole and service lines need to be moved, who if anyone, is responsible for the relocation of the
25 electrical pole and service lines if, in fact, they do need to be moved, whether the historical existence of the
26 electrical pole and service lines in their current location give rise to the right for them to remain in their
27 current location, whether SUN is entitled to complete the upgrade to their electrical pole and service lines.

1 and who is responsible for any costs and expenses associated with the foregoing. A further actual
2 controversy has arisen between Cross-Complainants and PG&E regarding the safety issues related to the
3 power pole and power lines, as described in paragraph 9, above.

4 12. Cross-Complainants desire a judicial determination of their rights and duties with
5 respect to the public utility easement and the other subject matters set forth in Paragraphs 8-9, and 11 above
6 and a declaration with respect to each of these subject matters.

7 13. A judicial declaration is necessary and appropriate at this time under the
8 circumstances in order that Cross-Complainants may ascertain their rights and duties as well as those of
9 SUN and PG&E with respect to the subject matters set forth in Paragraphs 8-9, and 11, above.

10 14. Cross-Complainants have attempted to resolve these issues informally with both SUN
11 and PG&E but, unfortunately, SUN and PG&E have refused to communicate in good faith any further with
12 regard to these subject matters.

13 **WHEREFORE**, Cross-Complainants seek judgment as hereinafter appears below.

14 **SECOND CAUSE OF ACTION**

15 **(Public Nuisance against PG&E)**

16 15. Cross-Complainants incorporate by reference the allegations of Paragraphs 1 through
17 14 as though fully set forth herein.

18 16. Cross-Complainants bring this action pursuant to Code of Civil Procedure Section
19 731 and Civil Code Section 3493.

20 17. By maintaining and/or permitting the above-described condition to exist, i.e., to allow
21 the power pole, to which power lines are connected, at the MESTER Property to have fallen into such a
22 condition such that it has listed to an angle, and appears to be continuing to list at a greater and greater angle
23 with each passing day, PG&E has caused and maintained, and/or permitted the maintenance of, a continuing
24 public nuisance within the meaning of Civil Code Sections 3479 and 3480. The conditions of the power
25 pole and power lines are injurious to health and offensive to senses so as to interfere with the comfortable
26 enjoyment of life or property in an entire community, in that they represent a significant fire hazard that is
27 potentially devastating not only to Cross-Complainants' property, but to the entire community at large.

1 18. At all times herein, PG&E has had notice and knowledge of the condition of the
2 power pole, and that its conditions constitute a public nuisance.

3 19. Cross-Complainants have no adequate remedy at law in that damages are insufficient
4 to protect the public from the present danger and harm caused by the conditions described above.

5 20. Cross-Complainants are informed and believe that PG&E will continue to maintain
6 the power pole and power lines in the above-described condition as a public nuisance.

7 21. Unless said nuisance is abated, Cross-Complainants and citizens of the surrounding
8 community and neighborhood will suffer irreparable injury, in that said conditions will continue to be
9 injurious to their enjoyment and free use of their property.

10 **WHEREFORE**, Cross-Complainants seek judgment as hereinafter appears below.

11 **THIRD CAUSE OF ACTION**

12 **(Private Nuisance against PG&E)**

13 22. Cross-Complainants incorporate by reference the allegations of Paragraphs 1 through
14 14 as though fully set forth herein.

15 23. Cross-Complainants bring this action pursuant to Code of Civil Procedure Section
16 731 and Civil Code Section 3501.

17 24. By maintaining, and/or permitting, the above-described conditions to exist, i.e., to
18 allow the power pole, to which power lines are connected, at the MESTER Property to have fallen into such
19 a condition such that it has listed to an angle, and appears to be continuing to list at a greater and greater
20 angle with each passing day, PG&E has caused and maintained, and/or permitted the maintenance of, a
21 continuing private nuisance within the meaning of Civil Code Sections 3479 and 3481. The condition of
22 the power pole and power lines are injurious to health and offensive to senses so as to interfere with the
23 comfortable enjoyment of life or property in an entire community, in that they represent a significant fire
24 hazard to Cross-Complainants' property, as well as the additional hazard of electrical power lines falling
25 to the ground as the condition of the power pole deteriorates.

26 25. At all times herein, PG&E has had notice and knowledge of the condition of the
27 power pole, and that its condition constitutes a private nuisance.

1 26. Cross-Complainants have no adequate remedy at law in that damages are insufficient
2 to protect Cross-Complainants from the present danger and harm caused by the conditions described above.

3 27. Cross-Complainants are informed and believe that PG&E will continue to maintain
4 the power pole in the above-described condition as a private nuisance.

5 28. Unless said nuisance is abated, Cross-Complainants will suffer irreparable injury, in
6 that said conditions will continue to be injurious to the enjoyment and the free use of their property.

7 **WHEREFORE**, Cross-Complainants pray for relief against Cross-Defendants, and each
8 of them, as follows:

9 First Cause of Action

10 1. For a declaration that there is a public utility easement burdening the MESTER
11 Property, that the existing electrical pole and service lines are not within that easement; that the existing
12 electrical pole and service lines in their current location are burdening the MESTER Property in such a
13 manner that a portion of the MESTER Property is unusable by Cross-Complainants; that the electrical pole
14 and service lines are neither safe nor being adequately maintained by PG&E; that PG&E shall move the
15 electrical pole and power lines to a safer location within the easement and maintain the power lines in an
16 adequate manner; that if the court determines that the electrical pole should be moved, PG&E shall, among
17 other things, install a new underground conduit and small underground junction box and connect the
18 improvements for the benefit of SUN, as requested by SUN, and that Cross-Complainants shall have no
19 obligation to pay for the moving the pole, its maintenance or upkeep, or the installation of the improvements
20 requested by SUN; or, alternatively, that PG&E shall adequately repair and maintain the electrical pole and
21 service lines in their current location, and that no improvements as requested by SUN shall be made.

22 Second Cause of Action

23 2. The power pole and power lines attached to the power pole be declared a public
24 nuisance, and that PG&E be responsible for abating said public nuisance by either moving the pole, or
25 making, and maintaining the pole such that it is no longer a fire hazard.

26 Third Cause of Action

27 3. The power pole and power lines attached to the power pole be declared a private
28

1 nuisance, and that PG&E be responsible for abating the nuisance by either moving the pole, or ensuring that
2 the pole is safe.

3 As to All Causes of Action

4 4. For reasonable attorney's fees.

5 5. For costs and expenses.

6 6. For such other and further relief as the court may deem just and proper.

7 DATED: August 8, 2018

FINWALL LAW OFFICES, APC

8
9 By: 

GORDON J. FINWALL

Attorneys for Defendants/Cross-Complainants
CSABA MESTER and MARTA MESTER

1 **PROOF OF SERVICE**

2 I, the undersigned, say:

3 That I am now, and at all times mentioned, a citizen of the United States, over the age of
4 eighteen years, a resident of Santa Clara County, California; I am not a party to the within action or cause;
5 that my business address is 1056 Lincoln Avenue, San Jose, California 95125; that I served a copy of the
6 **Defendants and Cross-Complainants CSABA MESTER and MARTA MESTER's Cross-Complaint**
7 **against PG&E** placing said documents in an envelope addressed to:

8 David Hamerslough
9 ROSSI, HAMERSLOUGH, REISCHL & CHUCK
10 1960 The Alameda, Suite 200
11 San Jose, CA 95126

12 Kenyon Mark Lee
13 LEE LAW OFFICES
14 1700 S. El Camino Real, Suite 450
15 San Mateo, CA 94402

16 and placing said copies for collection and mailing on August 8, 2018 at San Jose, California, following our
17 ordinary business practices. I am readily familiar with this business' practice for collecting and processing
18 documents for mailing. On the same day that document is placed for collection and mailing, it is deposited
19 in the ordinary course of business with the United States Postal Service in a sealed envelope with postage
20 fully prepaid.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on August 8, 2018 at San Jose, California.

23 

24 CONNIE YOUNG

1 **DAVID HAMERSLOUGH (SBN 95010)**
2 **RICHARD B. GULLEN (SBN 144513)**
3 **ROSSI, HAMERSLOUGH, REISCHL & CHUCK**
4 **1960 The Alameda, Suite 200**
5 **San Jose, CA 95126-1493**
6 **(408) 261-4252**
7 **Fax: (408) 261-4292**

8 **Attorneys for Plaintiffs Xiaotian Sun**
9 **and Wei Luo**

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SANTA CLARA**

13 **XIAOTIAN SUN and WEI LUO,**

14 **Plaintiffs,**

15 **vs.**

16 **CSABA MESTER, MARTA MESTER,**
17 **PACIFIC GAS AND ELECTRIC**
18 **COMPANY, and DOES 1 - 20, inclusive,**

19 **Defendants.**

20 **AND RELATED CROSS-ACTIONS.**

Case No.: 17CV305995

STIPULATION AND [PROPOSED]
ORDER FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT

Action Filed: February 3, 2017

Trial Date: None set

21 **THE PARTIES, THROUGH THEIR ATTORNEYS OF RECORD, HEREBY**
22 **STIPULATE AS FOLLOWS:**

23 1. Plaintiffs shall have leave to file the original of the Second Amended Complaint, a
24 copy of which is attached hereto as Exhibit A.

25 2. This Stipulation may be signed in counterparts. Signatures by facsimile or
26 electronic transmission shall be binding.

27 **IT IS HEREBY STIPULATED AND AGREED.**

28 **STIPULATION AND [PROPOSED] ORDER FOR LEAVE TO FILE SECOND AMENDED**
COMPLAINT

1

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Reischl & Chuck
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San Jose, CA
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EXHIBIT C

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Date: 7/8/19

ROSSI, HAMERSLOUGH, REISCHL & CHUCK

BY: 

RICHARD B. GULLEN, ESQ.
Attorneys for Plaintiffs
Xiaotian Sun and Wei Luo

Date: 7/8/19

FINWALL LAW OFFICES, APC

By: 

GORDON FINWALL, ESQ.
Attorneys for Defendants/Cross-Complainants
Csaba Mester and Marta Mester

ORDER

IT IS SO ORDERED. Plaintiffs are hereby granted leave to file the original of the
Second Amended Complaint, a copy of which is attached hereto as Exhibit A.

Date: _____ By: _____
JUDGE OF THE SUPERIOR COURT

Rossi, Hamerslough,
Reischl & Chuck
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San Jose, CA
95126-1493
(408) 261-4252
Fax (408) 261-4292

EXHIBIT A
TO
STIPULATION AND ORDER
FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

1 **DAVID HAMERSLOUGH (SBN 95010)**
2 **RICHARD B. GULLEN (SBN 144513)**
3 **ROSSI, HAMERSLOUGH, REISCHL & CHUCK**
4 **1960 The Alameda, Suite 200**
5 **San Jose, CA 95126-1493**
6 **(408) 261-4252**
7 **Fax: (408) 261-4292**

8 Attorneys for Plaintiffs Xiaotian Sun
9 and Wei Luo

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

XIAOTIAN SUN and WEI LUO,

Plaintiffs,

vs.

CSABA WENDEL MESTER individually
and as trustee of the CSABA & MARTA
MESTER FAMILY REVOCABLE LIVING
TRUST DATED 9/1/2011 and any
amendments thereto, MARTA M. MESTER
individually and as trustee of the CSABA &
MARTA MESTER FAMILY REVOCABLE
LIVING TRUST DATED 9/1/2011 and any
amendments thereto, PACIFIC GAS AND
ELECTRIC COMPANY, and DOES 1 - 20,

Defendants.

Case No.: 17CV305995

**VERIFIED SECOND AMENDED
COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF BASED UPON:**

1. Declaratory Relief;
2. Quiet Title To Express Easement;
3. Quiet Title To Prescriptive Easement;
4. Quiet Title To Equitable Easement; and
5. Interference With Easements

Plaintiffs Xiaotian Sun and Wei Luo (hereinafter "Plaintiffs") alleges as follows:

PRELIMINARY ALLEGATIONS

1. Plaintiffs are individuals who at all times herein were and are residents of Santa Clara County, California. Plaintiffs are the owners of the real property and structures commonly known as 15651 On Orbit Drive, Saratoga, California, APN 517-25-046 ("Sun Property").

VERIFIED SECOND AMENDED COMPLAINT

1

1 2. Defendants Csaba Wendel Mester and Marta M. Mester are individuals who at
2 all times herein were and are residents of Santa Clara County, California. The Mesters own the
3 real property and structures commonly known as 15645 On Orbit Drive, Saratoga, California,
4 APN 517-26-015 and 517-26-016 ("Mester Property") and hold title to said Mester Property as
5 trustees of the Csaba & Marta Mester Family Revocable Living Trust dated September 1, 2011
6 and any amendments thereto (the "Mester Trust"). Defendants Csaba Wendel Mester and
7 Marta M. Mester both individually and as trustees of the Mester Trust are collectively referred
8 to herein as the "Mesters".

9 3. Defendant Pacific Gas And Electric Company (PG&E) is a utility company
10 doing business in Santa Clara County, California. PG&E is named as a defendant in this
11 lawsuit only as to the declaratory relief action because the dispute between Plaintiffs and the
12 Mesters involves the rights, duties, and obligations relating to the use of equipment owned by
13 PG&E and located within a public utility easement that burdens the Mesters' property. PG&E
14 is named as a necessary and indispensable party only to the declaratory relief cause of action.

15 4. Plaintiffs are ignorant of the true names and capacities, whether individual,
16 corporate, associate, or otherwise, of defendants named herein as DOES 1 through 20,
17 inclusive, and therefore sues said defendants by such fictitious names pursuant to the Code of
18 Civil Procedure §474. Plaintiffs will pray leave of Court to amend this Complaint to allege
19 their true names and capacities when the same have been ascertained.

20 5. Plaintiffs are informed and believe, and thereon allege, that each of the
21 fictitiously named defendants are responsible in some manner for the occurrences herein
22 alleged and that Plaintiffs' injuries and damages were proximately caused thereby. As used
23 herein, the word "defendants" shall mean the named defendants as set forth above and
24 defendants DOES 1 through 20, and each of them.

25 6. The real properties owned by Plaintiffs and the Mesters share a common
26 boundary. The Mester Property is burdened by a public utility easement. Plaintiffs are
27 informed and believe and thereon allege that PG&E installed an electrical pole and service lines
28 pursuant to the public utility easement. While the Mesters acknowledge the existence of the

1 public utility easement, they contend that the electrical pole and service lines have been placed
2 outside of the deeded easement.

3 7. Plaintiffs are informed and believe that Plaintiffs' service line has connected to
4 this electrical pole since 1976. Plaintiffs are informed and believe that in 2003 the prior owner
5 of the Sun Property installed the existing 200 amp electrical panel which was permitted and
6 inspected by the County of Santa Clara to support rooftop solar panels which were installed at
7 the same time. The solar panels were authorized by PG&E for connection to their electricity
8 grid and a new electricity meter was installed by PG&E on the new service panel. In reliance
9 upon the existing 200 amp electrical panel, between 2011 and 2012 Plaintiffs expanded the
10 house on the Sun Property by about an additional 1000 square feet and the electrical wiring was
11 designed, permitted and inspected based upon the existing permitted 200 amp service panel. In
12 May 2014, PG&E informed Plaintiffs that Plaintiffs must upgrade the electric cable serving the
13 Sun Property from 125 amps to at least 200 amps so that it is consistent with the service panel,
14 otherwise PG&E may discontinue Plaintiffs' electric service. Plaintiffs are informed that
15 because of the current square footage and electrical loads of the Sun house, the service panel
16 cannot be downgraded from 200 amps to 125 amps. The correction work required by PG&E
17 includes, among other things, replacing the existing underground 125 amp service line with a
18 new underground cable through a conduit, installing a small underground junction box, and
19 connecting these improvements to the existing electrical pole by a new cable running down the
20 pole under a riser. Plaintiffs have requested access to the subject pole and to the portion of the
21 public utility easement on the Mester Property in order to complete this work. The Mesters
22 have refused to provide access for the work to be done to the subject pole and/or within the
23 express public utility easement and have further claimed that because the electrical pole is
24 outside of the easement that Plaintiffs therefore have no right to complete the service upgrade
25 because to do so would require burdening portions of the Mester Property outside of the public
26 utility easement. Plaintiffs and PG&E have requested access to the Mester Property in order to
27 confirm the Mesters' assertion that the electrical pole is outside of the deeded public utility
28 easement. The Mesters refused to provide access until June and August of 2018 when the

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1 Mesters allowed PG&E and Plaintiffs respectively to perform surveys of the electrical pole to
2 confirm that the pole, and the equipment attached to the pole, including the underground cable
3 serving the Sun Property for decades, encroached a few feet outside of the express recorded
4 utility easement. The Mesters have also demanded that the electrical pole and service lines be
5 moved to a different location.

6 **FIRST CAUSE OF ACTION**
7 **(Declaratory Relief Against All Defendants)**

8 8. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 7 as
9 though set forth in full herein.

10 9. An actual controversy has arisen and now exists between Plaintiffs and
11 Defendants relative to their respective rights and duties with regard to, among other things, the
12 public utility easement burdening the Mester Property, the location of the electrical pole and
13 service lines, whether the electrical pole and service lines need to be moved, who, if anyone, is
14 responsible for the relocation of the electrical pole and service lines if in fact they do need to be
15 moved, whether the historical existence of the electrical pole and service lines in their current
16 location gives rise to the right for them to remain in their current location, whether Plaintiffs
17 are entitled to complete the upgrade to their electrical service based on the public utility
18 easement and the historical existence and location of the electrical pole and service lines, and
19 who is responsible for any costs and expenses associated with the foregoing.

20 10. Plaintiffs desire a judicial determination of their rights and duties with respect
21 to the public utility easement and the other subject matters set forth in Paragraph 9 above and a
22 declaration with respect to each of these subject matters.

23 11. A judicial declaration is necessary and appropriate at this time under the
24 circumstances in order that Plaintiffs may ascertain their rights and duties as well as those of
25 the Mesters and PG&E with respect to the subject matters set forth in Paragraph 9 above.

26 12. Plaintiffs have attempted to resolve these issues informally with both the
27 Mesters and PG&E but, unfortunately, the Mesters have refused to communicate any further
28 with regard to these subject matters.

1 WHEREFORE, Plaintiffs pray for relief against Defendants, and each of them, as more
2 fully set forth below.

3 **SECOND CAUSE OF ACTION**
4 **(Quiet Title to Express Easement Against Defendants the Mesters)**

5 13. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 12 as
6 though set forth in full herein.

7 14. The basis of Plaintiffs' claim to an express easement is based upon the public
8 utility easement that burdens the Mester Property. Said express easement was granted by the
9 then owner of the Mester Property by dedication in a subdivision map entitled "Tract No. 3360
10 Apollo Heights" recorded in Book 178 of Maps at P. 38 and 39, in the official records of Santa
11 Clara County, California on May 15, 1964 (the "Subdivision Map").

12 15. As stated in the Subdivision Map, the then owners of the Mester Property
13 dedicated "to public use" an easement for public utility within the northerly 10 feet of the
14 Mester Property. As also stated on the Subdivision Map, said dedication was accepted by the
15 County "on behalf of the public". A copy of a recorded Subdivision Map memorializing this
16 public utility easement is attached hereto as **Exhibit A**.

17 16. Plaintiffs are informed and believe that the electrical pole is located a few feet
18 outside of the 10-foot wide express utility easement, with the electric cable that serves the Sun
19 Property traveling through the express utility easement to connect to the electrical pole. The
20 Mesters dispute that Plaintiffs have any easement rights within the express 10-foot wide
21 express easement. Plaintiffs seek to quiet title to their rights to use the 10-foot wide express
22 utility easement which was granted for public use, and that Plaintiffs are entitled to upgrade
23 their utility service by installing, among other things, a new underground electric cable through
24 a conduit and a small underground junction box inside the public utility easement.

25 WHEREFORE, Plaintiffs pray for relief against Defendants, and each of them, as more
26 fully set forth below.

27 **THIRD CAUSE OF ACTION**
28 **(Quiet Title to Prescriptive Easement Against Defendants the Mesters)**

1 17. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 16 as
2 though set forth in full herein.

3 18. Regarding the existing electrical pole and the portion of the service line that is
4 not located within the express public utility easement, Plaintiffs request that the Court grant
5 Plaintiffs a prescriptive easement allowing the electrical pole and service line to remain in their
6 current location and allowing Plaintiffs to upgrade their electrical service by, among other
7 things, replacing the existing service line with, a new underground cable which runs through a
8 conduit and then connects to the existing electrical pole.

9 19. The easement that Plaintiffs are requesting exists based on the establishment of
10 prescriptive rights. Prescriptive rights have been established by virtue of the historical
11 existence and use of the electrical pole, service line, and related equipment in their current
12 location for more than five years without permission.

13 WHEREFORE, Plaintiffs pray for relief against Defendants, and each of them, as more
14 fully set forth below.

15 **FOURTH CAUSE OF ACTION**
16 **(Quiet Title to Equitable Easement Against Defendants the Mesters)**

17 20. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 19 as
18 though set forth in full herein.

19 21. Regarding the existing electrical pole and the portion of the service line that is
20 not located within the express public utility easement, Plaintiffs request that the Court grant
21 Plaintiffs an equitable easement allowing the electrical pole and service lines to remain in their
22 current location and allowing Plaintiffs to upgrade their electrical service by, among other
23 things, replacing the existing service line with a new underground cable which runs through a
24 conduit and then connects to the existing electrical pole.

25 22. Equitable rights exist based on, among other facts, the good-faith installation of
26 the electrical pole, service lines, and related equipment in a location that was understood to be
27 within the public utility easement.

28 23. The encroachment is not the result of Plaintiffs' willful act in that Plaintiffs are

1 informed and believe that the subject electrical pole and related lines providing electrical
2 service to the Sun Property have existed in their current location for decades, whereas Plaintiffs
3 did not acquire the Sun Property and begin using said electrical lines and electrical pole until
4 January 2008.

5 24. Balancing the hardships, if Plaintiffs are denied an equitable easement to
6 continue using the electrical lines and electrical pole which have been in existence for decades,
7 and to upgrade the service line as required by PG&E, Plaintiffs will suffer irreparable injury in
8 that Plaintiffs will be deprived of electrical service to their residence, whereas Defendants will
9 suffer no harm or burden, let alone undue burden, if the existing use is continued, or if
10 Plaintiffs are allowed to upgrade that use.

11 WHEREFORE, Plaintiffs pray for judgment as set forth below.

12
13 **FIFTH CAUSE OF ACTION**
14 **(Interference With Easements Against Defendants the Mesters)**

15 25. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 24 as
16 though set forth in full herein.

17 26. Defendants have obstructed and interfered with Plaintiffs' access to, and use of,
18 the above described easement by including, but not limited to, installing a fence which
19 interferes with Plaintiffs' access to the easement area.

20 27. As a result of Defendants' interference with Plaintiffs' easement rights,
21 Plaintiffs have suffered damages including, but not limited to, the loss of use of the easement
22 for purposes of upgrading Plaintiffs' electrical service to, among other things, charge an
23 electric vehicle, delay in the completion of the electrical upgrade work, increased costs of
24 construction for the electrical upgrade work, and other compensatory and consequential
25 damages, all in an amount to be proven at trial.

26 WHEREFORE, Plaintiffs pray for judgment as set forth below.

27 **PRAYER**
28

1 WHEREFORE, Plaintiffs pray as follows:

2 1. For a declaration that there is an express public utility easement as described in
3 Exhibit A burdening the Mester Property, that the existing electrical pole and service lines can
4 remain in their current location and do not need to be moved, that Plaintiffs, PG&E, or others
5 acting on behalf of Plaintiffs have the right to access the Mester Property, including the express
6 easement, for purposes of, among other things, installing, a new underground service line
7 through a conduit, and a small underground junction box and connecting these improvements to
8 the existing electrical pole; that if the electrical pole does need to be moved and/or replaced,
9 that Plaintiffs have no obligation to pay for any costs or expenses associated with the relocation
10 and/or replacement;

11 2. To quiet title to Plaintiffs' right to use the express public utility easement as set
12 forth on the Subdivision Map, and confirming the location of the service lines, and related
13 equipment within that easement and that Plaintiffs are entitled to upgrade their utility service by
14 among other things, replacing the existing underground service line with a new underground
15 service line through a conduit and a small underground junction box inside the public utility
16 easement and connecting these improvements to the existing electrical pole outside the express
17 easement by a new cable running down the pole under a riser and then underground through a
18 conduit a few feet until reaching the express easement;

19 3. To quiet title to a prescriptive easement that provides that the electrical pole,
20 service lines, and related equipment remain in their current location and that Plaintiffs may
21 upgrade their electrical service by, among other things, replacing the existing service line on
22 the pole with a new cable running down the pole under a riser and then underground through a
23 conduit a few feet until reaching the express easement;

24 4. To quiet title to an equitable easement that provides that the electrical pole,
25 service lines and related equipment remain in their current location and that Plaintiffs may
26 upgrade their electrical service by, among other things, replacing the existing service line on
27 the pole with a new cable running down the pole under a riser and then underground through a
28 conduit a few feet until reaching the express easement;

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5. For compensatory and consequential damages for Defendants' interference with Plaintiffs' easements in an amount to be proven at trial.

6. For a preliminary and permanent injunction restraining Defendants from interfering with or obstructing in any way Plaintiffs' use of the above described easements;

7. For such other and further relief as the court may deem just and proper.

//

//

//

Dated: _____, 2019 ROSSI, HAMERSLOUGH, REISCHL & CHUCK

BY:

RICHARD B. GULLEN

Attorneys for Plaintiffs Xiaotian Sun and Wei Luo

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Reischl & Chuck
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VERIFIED SECOND AMENDED COMPLAINT



**ROSSI HAMERSLOUGH
REISCHL & CHUCK**
A Professional Law Corporation

July 15, 2019

VIA U.S. MAIL, FACSIMILE & E-MAIL
(650) 636-9251

Tobias S. Keller, Esq.
Peter J. Benvenuti, Esq.
Jane Kim, Esq.
KELLER & BENVENUTTI, LLP
650 California St Ste 1900
San Francisco, CA 94108
tkeller@kellerbenvenuti.com
pbenvenuti@kellerbenvenuti.com
jkim@kellerbenvenuti.com

FILE COPY

RE: SUN/MESTER/PG&E
Our File: D16196

Dear Counsel:

Attached is a proposed joint stipulation for relief from the automatic stay to allow my clients Plaintiffs/Movants Xiaotian Sun and Wei Luo (the "Suns") and Defendants/Cross-Complainants/Movants Csaba and Marta Mester to proceed with their equitable relief claims against Pacific Gas & Electric Company ("PG&E") in a pending state court action. That action seeks no monetary damages against PG&E and was set for trial for April 29, 2019, but the trial date was vacated because of PG&E's bankruptcy.

A motion for relief from the automatic stay will be served and noticed for July 31, 2019. However, we are seeking a stipulation in advance in order to streamline the motion which will be filed and served by July 17, 2019.

Given that the claims pending against Pacific Gas & Electric Company in the state court action only involve claims for equitable relief, we assume that you have no objection and will stipulate to relief from the automatic stay.

Accordingly, please sign and return the attached stipulation which will be presented to the court along with our motion. Thank you.

Counsel
July 15, 2019
Page 2 of 2

Very truly yours,



RICHARD B. GULLEN

RBG:CM

Encl.

cc: Client

S:\CL\D\D16196 (SUN.MESTER)\CORR\PG&E BK COUNSEL1.DOCX

ROSSI, HAMERSLOUGH, REISCHL & CHUCK

A PROFESSIONAL LAW CORPORATION

INITIALS

1960 THE ALAMEDA, SUITE 200
SAN JOSE, CALIFORNIA 95126-1493
Telephone: (408) 261-4252
Fax: (408) 261-4292

FAX COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGE(S) TO THE PARTIES BELOW:

NAME	FAX NUMBER
Tobias S. Keller, Esq.	(650) 636-9251
Peter J. Benvenuti, Esq.	(650) 636-9251
Jane Kim, Esq.	(650) 636-9251

PAGES (*including this one*):

FROM: RICHARD B. GULLEN
INSTRUCTIONS/REMARKS: PLEASE SEE ATTACHED.
DATE: July 15, 2019
OUR FILE NUMBER: SUN/MESTER/PG&E D16196
ORIGINAL TO FOLLOW: YES ☒ NO ☐

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In Re:

PG&E CORPORATION,

And

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

Affects both Debtors.

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**STIPULATION FOR RELIEF FROM
AUTOMATIC STAY**

Xiaotian Sun and Wei Luo, and
CSABA WENDEL MESTER and MARTA M.
MESTER individually and as trustees of the
CSABA & MARTA MESTER FAMILY
REVOCABLE LIVING TRUST DATED
9/1/2011 and any amendments thereto

Movants,

vs.

PG&E CORPORATION, PACIFIC GAS AND
ELECTRIC COMPANY, Debtors.

Date: July 31, 2019

Time: 9:30 a.m. (Pacific Time)

Place: United States Bankruptcy Court
450 Golden Gate Avenue
Courtroom 17, 16th Floor
San Francisco, CA 94102

Case No. 19-30088 (DM) – Stipulation for Relief from Automatic Stay

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1 Respondents.

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3 This Stipulation for Relief from Stay is entered into by and between PG&E Corporation
4 and Pacific Gas & Electric Company, the Debtors in the above-captioned Chapter 11 case
5 (collectively "PG&E" or the "Debtor"), Movants Xiaotian Sun and Wei Luo ("Suns" or
6 "Plaintiffs"), and Csaba Wendel Mester and Marta M. Mester individually and as trustees of the
7 Csaba & Marta Mester Family Revocable Living Trust Dated 9/1/2011 and any amendments
8 thereto ("Mesters" or "Defendants"). PG&E, Suns, and Mesters are collectively referred to
9 herein as the "Parties." The Suns and the Mesters are collectively referred to herein as the
10 "Movants."

11 The Parties desire to stipulate to relief from the automatic stay imposed by virtue of the
12 above-captioned Chapter 11 case to allow the Suns and the Mesters to prosecute and defend their
13 claims involving Pacific Gas and Electric Company ("PG&E Company") in the State Court
14 Action filed in Santa Clara County Superior Court as case number 17-CV-305995 (hereinafter
15 "State Court Action"), and any post-trial proceedings and/or appeal from any judgment entered
16 in the State Court Action.

17 This Stipulation is being submitted in conjunction with the Movants' Motion for Relief
18 from the Automatic Stay.

19 **RECITALS**

20 1. PG&E Company is a Debtor in the above Chapter 11 consolidated bankruptcy
21 case in the United States Bankruptcy Court for the Northern District of California, San Francisco
22 Division, designated as case number 19-30088(DM).

23 2. The Suns are the Plaintiffs in the State Court Action. The Mesters are Defendants
24 and Cross-Complainants in the State Court Action. PG&E Company is named in Plaintiffs' First
25 Amended Complaint as an alleged necessary party defendant to a declaratory relief claim, and in
26 the Mesters' Cross-Complaint as a cross-defendant in claims for equitable relief based upon
27 declaratory relief, public nuisance, and private nuisance. All of the claims in the State Court
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1 Action which name PG&E Company as a party seek equitable relief, but no monetary damages.

2 3. The State Court Action alleges that a wood power pole maintained by PG&E
3 Company which serves the Suns' Property and the Mesters' Property was found to be located
4 outside the bounds of an express public utilities easement on the Mesters' Property. As against
5 PG&E Company, the Suns' First Amended Complaint asserts a claim for declaratory relief
6 seeking, among other things, a declaration that the Suns have easement rights to use the Power
7 Pole in its existing location, or alternatively, whether the Power Pole needs to be moved, and if
8 so, the allocation of those costs.

9 5. Likewise, the Mesters' Cross-Complaint asserts against PG&E Company a claim
10 for declaratory relief as to the parties' rights and obligations to use the Power Pole in its existing
11 location, and claims for public nuisance and private nuisance alleging that the Power Pole is
12 unsafe and therefore must be moved.

13 6. The Suns and the Mesters have stipulated to allow the Suns to file a second
14 amended complaint which updates and clarifies the allegations, but does not seek any different or
15 additional relief against PG&E Company, other than declaratory relief (the "Second Amended
16 Complaint"). A copy of the proposed Second Amended Complaint is attached to the
17 accompanying Motion for Relief from Stay.

18 7. The claims in the State Court Action against PG&E Company have been stayed as
19 the result of the automatic stay imposed pursuant to Section 362 of the Bankruptcy Code (the
20 "Automatic Stay").

21 8. The Suns and the Mesters seek relief from the Automatic Stay to proceed with
22 their claims in the State Court Action against PG&E Company.

23 9. The Parties have agreed to the stipulated form of order, attached hereto as Exhibit
24 A.

25 STIPULATION

26 NOW, THEREFORE, based on the foregoing facts and recitals, the Parties hereby
27 stipulate and agree as follows:
28

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1 1. The Suns shall have relief from the Automatic Stay to the extent provided herein,
2 upon the Court's granting of an order in substantially the form attached as Exhibit A, to file the
3 proposed Second Amended Complaint, prosecute the Plaintiffs' claims in the State Court Action
4 to completion and/or judgment, to enforce any judgment, and defend any appeal.

5 2. The Mesters shall have relief from the Automatic Stay to the extent provided
6 herein, upon the Court's granting of an order in substantially the form attached as Exhibit A, to
7 prosecute the Mesters' claims and defenses in the State Court Action to completion and/or
8 judgment, to enforce any judgment, and defend any appeal.

9 3. The Suns and the Mesters acknowledge that PG&E Company does not admit any
10 liability or the validity of any claims with respect to the allegations in the State Court Action.

11 4. The modification of the Automatic Stay as set forth herein shall have no effect as
12 to Parties that are not a party this Stipulation, and the Automatic Stay shall remain in full force
13 and effect with the respect to such Parties and their claims or causes of action, if any, against
14 PG&E, its assets, its estate, or the property held by any Creditors' Representative appointed in
15 the above-captioned Chapter 11 case.

16 5. PG&E and its estate in the above-captioned Chapter 11 case are authorized to take
17 all actions necessary to effectuate the relief granted pursuant to this Stipulation.

18 6. This Stipulation is the entire agreement between the Parties hereto in respect of
19 the subject matter hereof and shall not be modified, altered, amended, or vacated without the
20 prior written consent of all parties hereto. No statement made or action taken in the negotiation
21 of this Stipulation may be used by any party for any purpose whatsoever.

22 7. Each person who executes this Stipulation on behalf of a party hereto represent
23 that he or she is duly authorized to execute this Stipulation on behalf of such party. The
24 Bankruptcy Court shall retain exclusive jurisdiction over any and all disputes arising out of or
25 otherwise relating to this Stipulation.

26 **IT IS SO STIPULATED.**

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1 Dated: July 15, 2019

ROSSI, HAMERSLOUGH, REISCHL & CHUCK

2

3

BY:

RICHARD B. GULLEN, ESQ.
Attorneys for Plaintiffs/Movants,
Xiaotian Sun and Wei Luo

4

5

6 Dated: July 15, 2019

FINWALL LAW OFFICES, APC

7

8

BY:

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Attorneys for Defendants/Movants, CSABA
WENDEL MESTER and MARTA M. MESTER
individually and as trustees of the CSABA &
MARTA MESTER FAMILY REVOCABLE
LIVING TRUST DATED 9/1/2011 and any
amendments thereto

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11

12

13 Dated: July 15, 2019

KELLER & BENVENUTTI, LLP

14

15

BY:

TOBIAS S. KELLER, ESQ.
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JANE KIM, ESQ.
Attorneys for Debtors and Debtors in possession
Pacific Gas and Electric Company and PG&E
Corporation

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In Re:

PG&E CORPORATION,

And

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

Affects both Debtors.

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**ORDER APPROVING
STIPULATION FOR RELIEF FROM
AUTOMATIC STAY**

Xiaotian Sun and Wei Luo

Secured Creditor,

vs.

Date:
Time: 9:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

PG&E CORPORATION, PACIFIC GAS AND
ELECTRIC COMPANY, Debtor;

Respondents.

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Upon review and consideration of the Stipulation for Relief from Automatic Stay (“Stipulation”) entered into by and between PG&E Corporation and Pacific Gas & Electric Company, the Debtor in the above-captioned Chapter 11 case (“PG&E” or the “Debtor”), Movants Xiaotian Sun and Wei Luo (“the Suns”), Csaba Wendel Mester individually and as trustee of the Csaba & Marta Mester Family Revocable Living Trust Dated 9/1/2011 and any amendments thereto, Marta M. Mester individually and as trustee of the Csaba & Marta Mester Family Revocable Living Trust Dated 9/1/2011 and any amendments thereto (“the Mesters”), the Court hereby finds that notice was appropriate under the circumstances and good cause exists to approve the Stipulation, and hereby orders as follows:

1. The Stipulation is APPROVED IN ITS ENTIRETY;

2. The Suns and the Mesters are granted relief from the Automatic Stay and/or Injunction on the terms and conditions set forth in the Stipulation.

3. The Bankruptcy Court shall retain jurisdiction over the subject matter in the Stipulation.

Date: _____ By: JUDGE OF THE UNITED STATES
BANKRUPTCY COURT

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